

Atty. Docket No: 2862 (203-3506 PCT US)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**APPELLANT:** Frank J. Viola

**EXAMINER:** Rinaldi Rada

**SERIAL NO.:** 10/529,568

**GROUP UNIT:** 3721

**FILED:** March 28, 2005

**CONFIRMATION NO.:** 9151

**FOR: TOOL ASSEMBLY FOR SURGICAL  
STAPLING DEVICE**

**DATED:** March 14, 2008

**Mail Stop: Appeal Brief – Patents**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Filed via EFS-Web**

**COMMUNICATION**

Dear Sir:

Please amend the Appeal Brief that was filed August 9, 2007 in connection with the above-identified patent application as follows:

**Amendments to the STATUS OF AMENDMENTS** section begin on page 2 of this paper.


**Remarks** begin on page 3 of this paper.

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**CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.8(a)**

I hereby certify that this correspondence is being transmitted on the date below with the United States Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450, via electronic submission.

Dated: March 14, 2008

  
Tricia Tucci

**Amendments to the Status of Amendments Section**

Please replace page 2 of the Appeal Brief filed August 9, 2007 in connection with the above-identified application with the Substitute Sheet submitted herewith.

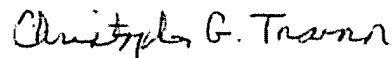
**Attachment: Substitute Sheet**

### REMARKS

In reviewing the Appeal Brief filed August 9, 2007 in connection with the above-identified application, Appellant recognized that Section IV of the Appeal Brief (STATUS OF AMENDMENTS) mistakenly and inadvertently indicates that the Amendment dated July 2, 2007 that was filed in response to the Advisory Action dated May 18, 2007 was not entered. Please note that the Amendment dated July 2, 2007 was entered by the Examiner, as indicated in the Advisory Action dated August 16, 2007. Section IV also fails to identify the Amendment filed after final on May 1, 2007 which overcame the rejection of Claims 17-27 and 37 under 35 U.S.C. § 112, second paragraph, presented in the Final Office Action dated February 1, 2007, as indicated by the Examiner in the Advisory Action dated May 18, 2007. Finally, please note that Section VIII (Appendix of Claims) of the Appeal Brief filed August 9, 2007 accurately reflects the claims currently under appeal.

Appellant respectfully requests entry of the Substitute Sheet submitted herewith.

Respectfully submitted,



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### **III. STATUS OF CLAIMS**

The status of the claims of this application is as follows:

- A) Claims 17-27 and 37 are pending;
- B) Claims 17-27 and 37 stand rejected and are being appealed;
- C) Claims 1-16 and 28-36 have been canceled; and
- D) Claims 38-40 have been withdrawn.

### **IV. STATUS OF AMENDMENTS**

An after final Amendment dated May 1, 2007 was filed to overcome a rejection of Claims 17-27 and 37 under 35 U.S.C. § 112, second paragraph, in the Final Office Action dated February 1, 2007. Additionally, an after final Amendment dated July 2, 2007 was filed in response to an Advisory Action dated May 18, 2007. Each of these amendments was entered by the Examiner.

### **V. SUMMARY OF CLAIMED SUBJECT MATTER**

The above-referenced application relates generally to a surgical tool assembly for manipulating and/or applying fasteners to tissue, and more specifically, to a surgical tool assembly having a pair of jaws including a unique approximation mechanism to facilitate improved clamping and manipulation of tissue.

As seen below in FIGS. 1 and 3, tool assembly 10 includes, *inter alia*, a pair of jaws including an anvil 12, a cartridge assembly 14 having a support channel 18, and an approximation member 16. (See page 6, lines 17-19). Approximation member 16 is dimensioned to be linearly slidable through a slot 22a formed in a proximal body portion 22 of anvil 12 and through a proximal portion of support channel 18. (See page 7, lines 18-19).